

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Carter-Wallace Inc. :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law :
for the Year 1973 :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of June, 1981, he served the within notice of Decision by certified mail upon Carter-Wallace Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carter-Wallace Inc.
767 Fifth Ave.
New York, NY 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
5th day of June, 1981.

Ernest A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Carter-Wallace Inc. :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law :
for the Year 1973

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of June, 1981, he served the within notice of Decision by certified mail upon Douglas J. Green the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Douglas J. Green
Peat, Marwick, Mitchell & Co.
345 Park Ave.
New York, NY 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
5th day of June, 1981.

Carmie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

June 5, 1981

Carter-Wallace Inc.
767 Fifth Ave.
New York, NY 10022

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Douglas J. Green
Peat, Marwick, Mitchell & Co.
345 Park Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CARTER-WALLACE, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Franchise Tax on Business	:	
Corporations under Article 9-A of the	:	
Tax Law for the Fiscal Year Ended	:	
March 31, 1973.	:	

Petitioner, Carter-Wallace, Inc., 767 Fifth Avenue, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the fiscal year ended March 31, 1973.

A formal hearing was held before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 29, 1979 at 9:15 A.M. Petitioner appeared by Peat, Marwick, Mitchell & Co. (Douglas J. Green, CPA). The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether denial of petitioner's request to file a combined franchise tax report with its wholly-owned subsidiary for a prior year was proper.

FINDINGS OF FACT

1. Petitioner, Carter-Wallace, Inc., filed its corporation franchise tax report for the fiscal year ended March 31, 1973 in a timely manner.
2. On November 24, 1976, an amended combined return for the abovesaid fiscal year was filed by petitioner for itself and its wholly-owned subsidiary,

Carter P.D., Inc. The amended return showed a refund due in the amount of \$30,056.08.

3. By letter dated February 15, 1977, the Audit Division denied petitioner's claim for refund based upon the policy of the State Tax Commission as enunciated in the Matter of Walker Engraving Corporation (June 6, 1971), viz., that combined reports were not permitted to be filed retroactively except under unusual circumstances. The letter further stated that the subject corporations had not been prevented in any manner from seeking permission to file on a combined basis for the period at issue.

4. Petitioner filed a timely petition for refund of tax.

5. Carter-Wallace, Inc. ("Carter-Wallace") was incorporated under the laws of Delaware and began business in New York on June 12, 1968. It is engaged in the manufacture and sale of toiletries.

6. Carter P.D., Inc. ("P.D.") is the wholly-owned subsidiary of petitioner. It was organized and incorporated under the laws of Delaware during the fiscal year ended March 31, 1973, and like Carter-Wallace, manufactures toilet articles. Carter-Wallace contributed the total capital to commence the operations of P.D. P.D. does business solely in Puerto Rico, and until the filing of the amended return, as above described, P.D. had never filed a New York franchise tax report. All of P.D.'s output is sold to Carter-Wallace.

7. On February 25, 1975, petitioner requested the permission of the State Tax Commission to file a combined report with P.D. on the ground that P.D. is part of a unitary business conducted with the parent. On March 14, 1975, the Corporation Tax Bureau granted tentative permission to the corporations to file on a combined basis commencing with the fiscal year April 1, 1973 through March 31, 1974.

Petitioner filed a combined report for fiscal year ended March 31, 1974 and has continued since that time to file on a combined basis with P.D.

8. Petitioner asserted that until December, 1974, when it sought the advice of Peat, Marwick, Mitchell & Co. regarding the requirements and procedures for filing franchise tax reports on a combined basis, it had been totally unaware of the applicable law for filing on such basis.

CONCLUSIONS OF LAW

A. That section 211.4 of the Tax Law provides in relevant part:

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations...may be required or permitted to make a report on a combined basis covering any such other corporations..."

B. That where the test of stock ownership or control is met, the following factors are taken under consideration by the State Tax Commission in its determination whether to require or permit the corporations to report on a combined basis:

"(1) whether the corporations are engaged in the same or related lines of business;

(2) whether any of the corporations are in substance merely departments of a unitary business conducted by the entire group;

(3) whether the products of any of the corporations are sold to or used by any of the other corporations;

(4) whether any of the corporations perform services for, or lend money to, or otherwise finance or assist in the operations of, any of the other corporations;

(5) whether there are other substantial intercompany transactions among the constituent corporations." Section 5.28(b), Ruling of the State Tax Commission, March 14, 1962.

To require or permit reporting on a combined basis is within the discretion of the Commission, which discretion must be exercised in such manner as to give

consistency to the Commission's discernible policy. Sapolin Paints Inc. v. Tully, 55 A.D.2d 759 (3d Dept. 1976).

C. That at the time petitioner filed its separate report for the fiscal year ended March 31, 1973, it was well aware of those circumstances which would warrant seeking permission from the Commission to file on a combined basis for said period, and which indeed formed the basis for its request, on February 25, 1975, to file on a combined basis for fiscal year ended March 31, 1974. These circumstances existed from the time of P.D.'s incorporation.

That petitioner was unaware of the applicable statutes and regulations is insufficient reason to allow filing retroactively; it is axiomatic that ignorance of the law excuses no one.

D. That there existed no unusual circumstances which would give rise to a need on the part of petitioner for an extended period to determine whether permission should be requested for the filing of a combined return. Matter of Walker Engraving Corporation, State Tax Commission, June 6, 1971.

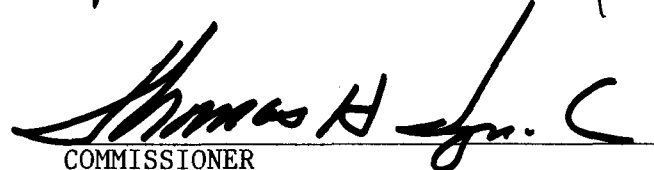
E. That the petition of Carter-Wallace, Inc. is hereby denied.

DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER